IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

Hampton Lane Homeowners
Association, et al.,

Plaintiffs,

v. CASE NO. 93CVH-06-4487

JUDGE SHEWARD

City of Upper Arlington,
et al.,

Defendants.

DECISION

This matter comes on for consideration upon an Amended Complaint for Injunctive and Declaratory Relief.

Evidence was taken, and briefs were submitted at the hearing held on the issues herein on July 23, 1993.

All parties were present and represented by counsel, and a record was taken.

The issues presented to the Court, in simplest terms, challenge Ordinance No. 81-93 passed by the Upper Arlington City Council on June 28, 1993.

This challenge comes on two fronts: first, whether the passage of this ordinance was a proper exercise of emergency legislation and, second, whether the passage of this ordinance constitutes illegal spot-zoning.

In dealing with the first challenge, the Court notes that Section XIII of the Charter of the City of Upper Arlington provides for temporary or interim legislation,

but does not contain a specific provision for emergency legislation.

The City argues that authority to pass emergency legislation exists pursuant to R.C. 731.30. Plaintiffs argue that R.C. 731.30 is not applicable and that the City is confined to Section XIII of the Charter of the City of Upper Arlington regarding the passage of temporary legislation.

It should be noted that R.C. 731.30 went into effect on October 1, 1953. Its predecessor was G.C. 4227-3. The language of G.C. 4227-3 and R.C. 731.30 are identical except that the former statute refers to city council as "council of such municipal corporation" while the latter statute refers to city council as "legislative authority."

The Ohio Supreme Court has dealt with the issue of emergency legislation passed pursuant to a city charter as well as pursuant to state statute. In *State, ex rel., City of Fostoria v. King* (1950), 154 Ohio St. 213, the legislation at issue was passed in accordance with an Ohio statute, not a city charter. The Court finds persuasive the broad language of Justice Taft in the *King* decision. Justice Taft wrote:

> "The duty and responsibility of determining the emergency and the necessity that a measure go into immediate effect are confided to the legislative branch of government. If the prescribed procedure for enactment thereof is followed, such measure goes into effect immediately upon its passage.' (Quoting *Holcomb, Aud., v. State, ex rel. Coxey,* (1933) 126 Ohio St. 496, paragraph three of the syllabus.)

> It may seem strange to sustain legislation as emergency legislation not subject to referendum, where there is in fact no emergency, or where the reasons given for the necessity for declaring the emergency do not appear to be valid reasons. However, as does Section 4227-3, General Code, provisions for emergency legislation usually safeguard referendum rights by requiring substantially more than a majority vote to enact emergency legislation. The statutory requirement of stating reasons for declaring the emergency is provided only to satisfy voters that their representatives did have valid reasons for the necessity of declaring that the ordinance was an emergency. If there was in fact no emergency or if the reasons give for such necessity are not valid reasons, the voters have an opportunity to take appropriate action in the subsequent election of their representatives. However, the existence of an emergency or the soundness of such reasons is subject to review only by the voters at such a subsequent election of their representatives. They are not subject to review by the courts.

Id. at 220-221.

The Supreme Court of Ohio recently revisited this issue in *State ex rel., Moore v. Abrams* (1991), 62 Ohio St.3d 130. The above language of Justice Taft was quoted in its entirety in *Abrams*. The *Abrams* court was confronted with emergency legislation passed pursuant to a city charter provision.

Plaintiffs herein argue correctly that the *Abrams* decision is based upon compliance with the city charter in question. Plaintiffs further argue that because there is no

emergency legislation authority in the Charter of the City of Upper Arlington and because there is a provision for temporary or interim legislation, the *Abrams* decision does not apply to this case and the City of Upper Arlington cannot avail itself of R.C. 731.30.

This Court rejects Plaintiffs' argument. No authority has been offered which prohibits the City of Upper Arlington from enacting and passing emergency legislation pursuant to R.C. 731.30.

The Supreme Court of Ohio has held the position, as originally stated by Justice Taft in the *King* decision, for 41 years that:

> If there was in fact no emergency or if the reasons given for such necessity are not valid reasons, the voters have an opportunity to take appropriate action in the subsequent election of their representatives. However, the existence of an emergency or the soundness of such reasons is subject to review only by the voters at such a subsequent election of their representatives. They are not subject to review by the courts.

King, supra, at 221. Consequently, the remedy available to the voters of Upper Arlington is at the ballot box in the next City Council election.

For these reasons, the Court finds that Ordinance No. 81-93 is a valid emergency measure.

The second challenge leveled against Ordinance No. 81-93 is that it constitutes illegal spot-zoning.

The issue of spot-zoning was addressed in *Willott v. Village of Beachwood* (1964), 175 Ohio St. 557. The Ohio

Supreme Court considered an area of 80 acres of land and stated simply:

> 'Spot-zoning' refers to the singling out of a lot or a small area for discriminatory or different treatment from that accorded surrounding land which is similar in character.
>
> The area in question here is not a single lot or a small area, but is a large parcel of land, 80 acres in area. Council's action does not fall within the concept of 'spot-zoning'.

Id., at 559.

In the case under consideration, the affected area consists of 33.9 acres of land. There is conflicting testimony regarding whether the reclassification of said area represents spot-zoning.

The question presented here is a question of fact that must be determined in the face of a presumption of validity afforded to Defendants. Said presumption may be refuted by Plaintiffs only by a clear showing that the legislation in question is arbitrary, capricious, and bears no relationship to the general welfare of the community. Plaintiffs have failed to produce sufficient evidence to refute this presumption. At the heart of this issue is the fundamental concept stated repeatedly by the Ohio Supreme Court that one branch of government should not encroach upon the duties and prerogatives of another. 16 American Jurisprudence 2d, Constitutional Law, Section 138.338-339.

When an enactment under attack is a legislative exercise pursuant to the police power, a party opposing such action must demonstrate clear and palpable abuse of that

power in order for a reviewing court to substitute its own judgment for legislative discretion. *Allison v. Toledo* (1919), 99 Ohio St. 416.

Justice O'Neill in *Willotz v. Village of Beachwood* (1964), 175 Ohio St. 557, clearly states the limitations of judicial review of legislative acts:

> The determination of the question of whether regulations prescribed by a zoning ordinance have a real or substantial relation to the public health, safety, morals or general welfare is committed, in the first, instance to the judgment and discretion of the legislative body. Where such a judgment deals with the control of traffic, volume of traffic, burden of traffic, effect upon valuation of property, municipal revenue to be produced for the city, the expense of the improvement, land use consistent with the general welfare and development of the community as a whole, or, in short, where the judgment is concerned with what is beneficial or detrimental to good community planning, it is in the first instance a legislative and not a judicial matter. The legislative, not the judicial, authority is charged with the duty of determining the wisdom of zoning regulations, and the judicial judgment is not to be substituted for the legislative judgment in any case in which the issue or matter is fairly debatable.
>
> Even though the court, on the facts presented, might decide otherwise than did council, so long as the matter is reasonably debatable, the court has no authority to interfere. * * *

Id. at 560.

Based upon the foregoing, the Court concludes that Ordinance No. 81-93 passed June 28, 1993 is a valid emergency measure and is not unconstitutional spot-zoning subject to review by this Court.

Counsel for Defendants shall prepare an appropriate entry pursuant to Local Rule 25.01.

/s/ Richard S. Sheward
RICHARD S. SHEWARD, JUDGE

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